IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7718 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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NANIBEN HARIBHAI PATEL

Versus

DISTRICT PRIMARY EDUCATION OFFICER

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Appearance:

MR NS SHETH for Petitioner

MS MANISHA LAVKUMAR, AGP for Respondent No. 1

MR HS MUNSHAW for Respondent No. 2

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CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 19/04/2001

ORAL JUDGEMENT

Rule. Service of rule waived by Ms. Manisha Lavkumar, Ld. AGP for respondent no. 1 and Mr. H.S. Munshaw for respondent no.2. In the facts and

circumstances of the case the petition is taken up for final hearing today.

2. The petitioner, lady primary teacher having 45% physical disability, serving in Anjar Taluka of Kutch district, requested the authorities for transferring her to Surendranagar district on the ground that her native place is Viramgam in Ahmedabad [Rural] district. That request was made in the year 1992. However, thereafter the petitioner got married in the year 1996. The marriage certificate is at Annexure-B to the petition. On 6/7/1998 the petitioner received letter from the District Primary Education Officer, Surendranagar seeking details about her voluntary transfer application. The petitioner replied by her letter dated 20/7/1998 that the petitioner did not require any transfer since she was already married in Kutch district. That letter is produced at Annexure-D to this petition. Again when the District Primary Education Officer, Surendranagar informed the petitioner that her request for voluntary transfer from Kutch district to Surendranagar district was being accepted, the petitioner informed the concerned officer that the petitioner was no longer interested in transfer since she already married in Kutch district. That reply was given on 15/11/1998, which is at Annexure-G. However, respondent no. 2 - District Primary Education Officer, Kutch passed the impugned order dated 9/11/1998 - Annexure-E transferring the petitioner from Kutch district to Surendranagar district. The petitioner, therefore filed the present petition challenging the said order of transfer. Although the impugned order of transfer was passed on 9/11/1998 it is the petitioner's case that the order was not implemented till the petitioner approached this Court and by order dated 5/10/1999 this Court directed the respondents not to give effect to the impugned order if it was not already effected earlier. On the returnable date the learned counsel for the respondents prayed for time to file reply affidavit, but no such reply affidavit is filed till date.

3. In view of the absence of any affidavit in reply the Court proceeds on the footing that the averments made in the petition are uncontroverted and are, therefore, to be accepted.

4. Since the impugned order of transfer was issued only on the ground of application for transfer made by the petitioner way back in the year 1992 and since the intervening events particularly the petitioner's marriage in the year 1996 with the person residing in Kutch

district rendered the transfer unnecessary, the petitioner does not want transfer outside the Kutch district. However, the respondents passed the impugned order of transfer, notwithstanding the communication sent by the petitioner withdrawing her request for transfer which was communicated to respondent no. 1 as far back as in July 1998 as per Annexure-D.

5. In view of the above, the impugned order of transfer is clearly vitiated by non-application of mind. The petition is therefore allowed. The impugned order of transfer is quashed and set aside. In the facts and circumstances of the case, there shall be no order as to costs. Rule made absolute. No costs.

[ M.S. Shah, J.]

* Pansala.